

reasonable doubt, claiming that he was acting in self-defense. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 The evidence at trial established that, on April 24, 2010, defendant filed an action for dissolution of his marriage while he was still living with his wife and two young daughters. On that day, defendant expressed frustration with the cost of auto repairs, and an argument ensued over finances. The argument escalated into a physical altercation, leaving both with injuries. Defendant called 911, and two officers were sent to his residence. Afterwards, his wife was treated for her injuries at a hospital emergency room.

¶ 5 Defendant was subsequently charged with one count of domestic battery, a Class A misdemeanor (720 ILCS 5/12-3.2(a)(1) (West 2004)). At the bench trial, the State called two witnesses: (1) Stacey Acevez, his wife and the victim; and (2) Police Officer Kumiga of the Chicago police department, who had responded to defendant's 911 call. The State also introduced a photograph of the wife's injuries.

¶ 6 The wife testified that, on the morning of April 24, 2010, defendant went to the bank regarding finances for auto repairs. When he returned home, he went into their bedroom and asked her for sex, which she declined. She testified that later she found him in the closet of the bedroom on his cellular telephone. After he hung up, he told her that he did not have enough money for the auto repairs.

¶ 7 The wife testified that defendant then began shouting and cursing about their finances. She testified that defendant grabbed a large ironing board that had items on top of it, and threw it

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at her. She was sitting on the bed, and the board hit her in the knee. She testified that she rose and ran into the living room, and defendant followed her. She testified that she was worried about the escalation of violence in their relationship, so she picked up the telephone to call the police, while warning defendant not to hit her. Before she could dial, defendant grabbed the telephone from her and threw it. She then asked one of their daughters to bring her cellular telephone. Defendant snatched the phone from their daughter before she could place a call. Defendant then threw the phone on the floor, which cracked the phone.

¶ 8 The wife testified that defendant insulted and cursed, and then threatened to leave. She tried to keep him in the home by holding her hand in front of him, by attempting to calm him down by talking, and eventually by taking one of his shoes. She testified that defendant then pushed her to the ground and punched her about 10 times on both sides of her head. The wife testified that she protected her face with her hands as defendant hit her with his closed fists. She testified that this happened in front of their two daughters, who joined her in screaming at defendant to stop.

¶ 9 Once defendant stopped, the wife testified that she rose and attempted two swings at defendant's face, missing both times. She testified that defendant then pushed her back to the ground and began to attack her in a similar manner. She testified that defendant connected on about an additional 10 blows to her head, hitting her hands as they were protecting her face and head. The wife testified she and their daughters were again screaming, and that defendant did not stop punching her until their daughters begged him to stop.

¶ 10 The wife testified that defendant then picked her up and started pulling her hair. She begged him to stop, after which he threw her against a wall. She testified that she then assessed her injuries and told defendant that she was going to the hospital. At first defendant ignored her claim of injury and showed her their pending divorce case on the computer.

¶ 11 The wife testified that, once defendant realized that she was indeed leaving to visit the emergency room, he attempted to persuade her to stay. She testified that defendant told her that if she went to the hospital, it would cause him trouble at his job, and offered her money not to go to the hospital. She testified that, after she refused not to go to the hospital, defendant used his own cellular telephone to call the police. She overheard defendant tell the dispatcher that his wife was abusing him.

¶ 12 The wife testified that she invited responding Chicago Police Officers Agnon and Kumiga into their home. She then provided her account of the events to the officers and showed them her injuries. She was then taken to the Saint Francis hospital for treatment. The wife testified she had “redness and swelling” on her head, a red mark on her left knee, as well as swollen hands. Her left hand had bruising on the knuckles and “on the left side by the thumb.” Two of her fingernails were “separated from the bed.” A photograph of her left hand taken in the emergency room was subsequently admitted into evidence.

¶ 13 The State’s next witness, Officer Kumiga, testified that, when he and Officer Agnon arrived at the home, he observed defendant, his wife, and their two daughters, who were both “visibly shaken.” Kumiga testified that he observed that items were out of place, including two broken telephones on the floor, and a knocked-over ironing board. The wife told him that

defendant threw the ironing board at her, but Kumiga did not include that statement in his report. He testified that he observed that she had a red mark on her left knee and right arm, as well as swelling and redness on her hands. Kumiga testified that he did not observe any injuries on her face or head, nor did he observe any hair falling out of her head.

¶ 14 Kumiga testified that defendant remained cooperative and remained seated. He did not observe any visible injuries on defendant. Kumiga also testified that defendant did not show him any injuries that he may have suffered, nor did Kumiga ask defendant to show him any injuries.

¶ 15 The State rested, and the trial court denied defendant's motion for a directed finding. Defendant then testified in his own defense. Defendant testified that on April 24, 2010, he had initiated a divorce action, though he and his wife were "attempting to reconcile." Defendant testified that he did not ask his wife for sex that day, and that they did engage in a shouting argument over finances. Defendant testified that his wife started swinging punches at him after about half an hour of yelling at each other. Defendant testified that he was on the couch, and that she struck him with open and closed fists repeatedly. Defendant stated that he did not hit or push her at all. Defendant testified that he did not throw the ironing board at her, nor did he observe it knocked over.

¶ 16 Defendant testified that his wife did not stop hitting him until he rose from the couch. Defendant testified that she then grabbed him from the back by his belt and started to strike him again as he attempted to walk away. Defendant testified that, fearing for the safety of their children, he attempted to call the police, but she grabbed his arm and struck his back as he attempted to do so. Defendant testified that the ensuing struggle resulted in both telephones being

broken. Defendant testified that he later was able to call the police because she did not notice his cellular telephone on the couch. Defendant testified that he informed the 911 operator that he was attempting to avoid a confrontation with his wife, and that the call ended prematurely because she had obtained a hold on him. Defendant testified that he believed his two daughters were in their bedroom for the entire duration of the fight.

¶ 17 Defendant testified that he suffered abrasions above his right collarbone and his side. Defendant testified that he attempted to show his injuries to responding Officer Agnon, but that the officer appeared indifferent. Defendant testified that he did not make an attempt to show his injuries to Officer Kumiga. Defendant testified that on April 26, 2010, the day that he was bonded out from jail, he took photographs of his own injuries. The photographs were later admitted into evidence at trial.

¶ 18 At the close of the bench trial, the trial court found defendant guilty of domestic battery. The trial court found the wife “one of the most compelling witnesses [he’s] seen in the court room,” and noted that he believed her testimony was “sincere” and “compelling.” The trial court dismissed defendant’s testimony as a “polarized” version of the facts.

¶ 19 ANALYSIS

¶ 20 On appeal, defendant claims that the evidence presented was insufficient for the trial court to have found him guilty of domestic battery beyond a reasonable doubt. Defendant also claims that his wife was the initial aggressor, and that he was acting in self-defense. For the following reasons, we find the evidence sufficient for a finding of domestic battery and affirm.

¶ 21

I. Standard of Review

¶ 22 “When a defendant challenges the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *People v. McGee*, 398 Ill. App. 3d 789, 793 (2010); *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). “[T]he critical inquiry *** must be *** to determine whether the record evidence could reasonably support a finding of guilty beyond a reasonable doubt.” *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)).

¶ 23 “[A] reviewing court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable or unsatisfactory as to create a reasonable doubt of the defendant’s guilt.” *People v. Rowell*, 229 Ill. 2d 82, 98 (2008); *McGee*, 398 Ill. App. 3d at 793. A reviewing court will not retry the defendant or substitute its judgment for that of the trier of fact. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009).

¶ 24 The standard of review for self-defense is "whether, taking all of the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt that defendant did not act in self-defense.” *People v. Lee*, 311 Ill. App. 3d 363, 367 (2000). Once a defendant raises it, the State has the burden of proving beyond a reasonable doubt that the defendant did not act in self-defense. *People v. Grayson*, 321 Ill. App. 3d 397, 401 (2001). If the State negates any one of these elements, the defendant's claim of self-defense must fail. *People v. Shields*, 298 Ill. App. 3d 943, 947 (1998).

¶ 25

II. Domestic Battery

¶ 26 In the case at bar, defendant was convicted of domestic battery, a Class A misdemeanor under section 12-3.2 of the Criminal Code of 1961 (720 ILCS 5/12-3.2(b) (West 2010)). A person commits domestic battery when he or she (1) causes bodily harm, (2) to any family or household member, (3) knowingly without legal justification by any means. 720 ILCS 5/12-3.2(a)(1) (West 2010). Defendant claims that he acted with legal justification because he acted in self-defense. The elements of self-defense are that (1) unlawful force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm is imminent; and (4) the use of force was necessary. *People v. White*, 293 Ill. App. 3d 335, 338 (1997).

¶ 27

A. Bodily Harm

¶ 28 The first element of domestic battery is bodily harm. 720 ILCS 5/12-3.2(a)(1) (West 2010). The evidence at trial, viewed in the light most favorable to the State, established that defendant intentionally caused bodily harm to his wife. The trial court found that the wife provided convincing testimony that defendant initiated the confrontation when he threw an ironing board at her, which hit her in the leg and left a red mark. The wife testified that defendant pulled her hair, twice pushed her to the floor, and threw approximately 20 punches at her head. The blows struck her on her hands as she held them up to protect her face, leaving her hands red, bruised, and swollen. The trial court found the wife's testimony to be "compelling" and "sincere." The trial court explained that the wife appeared to be "someone who went through a pretty traumatic event that day," and found her to be "one of the more compelling witnesses seen

in the court room.” The trial court noted that there was “no compelling evidence in the record” that showed the wife had “any interest, bias, or motive to lie in the case.”

¶ 29 The wife’s testimony alone is enough to affirm a conviction. “The evidence of a single witness, if it is positive and the witness [is] credible, is sufficient to convict,” *People v. Smith*, 185 Ill. 2d 532, 541 (1992). However, the wife’s testimony was also corroborated by testimony from Officer Kumiga, who observed a red mark on the wife’s leg, swelling and redness on her hands, and no apparent injuries to her face. A photograph introduced by the State further substantiated the wife’s testimony, showing swelling and bruising on her hands, including tears near the nail bed.

¶ 30 Defendant’s testimony offered a contradictory account of the events, claiming that he never once punched or hurt his wife, and that he only touched her when he attempted to free himself. He testified that his wife initiated the fight and struck him repeatedly, including throwing multiple blows to his back as he tried to get away.

¶ 31 The trial court was the trier of fact with the authority to determine the credibility of witnesses and to both evaluate the evidence and resolve any inconsistencies. *People v. Ortiz*, 188 Ill. App. 3d 506, 514 (1989). The trial court was able to judge the demeanor of the witnesses when hearing their testimonies, and found the wife to be more credible while rejecting defendant’s testimony as a “polarized” version of the events. The totality of the State’s evidence, with due deference given to the trial court’s factual findings, was sufficient to prove the bodily harm element of domestic battery.

¶ 32 B. Family Member

¶ 33 The second element of domestic battery is that the victim is a family or household member. 720 ILCS 5/12-3.2(a)(1) (West 2010). The facts pertaining to this element are uncontested. The Criminal Code of 1961 defines “family or household members” as “spouses, former spouses, *** persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship” 720 ILCS 5/12-0.1 (West 2010). Though a divorce action had been filed, defendant and his wife were still married and living together with their two young daughters in the same household on the day of the incident, which satisfies the family member element of domestic battery.

¶ 34 C. Legal Justification: Self-Defense

¶ 35 The third element of domestic battery is that the offender had no legal justification. 720 ILCS 5/12-3.2(a)(1) (West 2010). In response, defendant claims that he was legally justified because he was acting in self-defense. As stated, the elements of self-defense are that (1) unlawful force is threatened against a person; (2) the person threatened is not the aggressor; (3) the danger of harm is imminent; and (4) the use of force was necessary. *People v. White*, 293 Ill. App. 3d 335, 338 (1997).

¶ 36 1. Unlawful Force

¶ 37 The first element of self-defense is that unlawful force is threatened against a person. *People v. White*, 293 Ill. App. 3d 335, 338 (1997). Defendant testified that during an argument with his wife, she started attacking him by throwing multiple punches at him. As defendant tried

to get away, his wife tried to stop him by pulling him from his belt area and landing several blows to his back. However, the trial court found the wife's testimony credible and it shows that she did not attack defendant in this manner. She testified that defendant first threw an ironing board at her, pushed her to the ground, and punched her approximately 10 times. It was not until after this beating that she rose and attempted two swings at defendant's head. However, according to the wife's testimony, this threat of force by the wife took place well after defendant had already beaten her. Although defendant's testimony greatly conflicted with that of the wife's, the trial court believed the wife. Therefore, we find that State proved that defendant did not face a threat of unlawful force, negating the first element, and thus the entire claim of, self-defense.

¶ 38

2. Not the Aggressor

¶ 39 The second element of self-defense is that the person threatened is not the aggressor. *People v. White*, 293 Ill. App. 3d 335, 338 (1997). The wife's testimony, which the trial court found credible, showed that defendant was the initial aggressor when he started the fight by throwing the ironing board at his wife. Furthermore, the wife's testimony shows defendant continued the violence by pulling her hair, throwing her to the ground, and punching her repeatedly, all before she made any attempt to fight back. The wife's testimony, which was corroborated by Officer Kumiga and photographic evidence, shows a one-sided nature of the fight, proving that defendant was the aggressor and the wife was the victim. See e.g. *People v. Grayson*, 321 Ill. App. 3d 397, 402 (2001) (defendant's self-defense claim was rejected where the testimonies, medical evidence, and photographs showed an "apparent one-sided nature of a struggle").

¶ 40 Defendant testified that his wife initiated the fight by attacking him during a verbal argument. However, the trial court rejected defendant's testimony, finding it to be a contradictory and "polarized" version of events. Defendant cites *People v. Lynch*, 104 Ill. 2d 194, 200 (1984), in support of his argument that, where there is contradictory testimony about who initiated the fight, evidence of the wife's propensity for violence may be admissible to support defendant's version of the events. However, there is no credible evidence in the record to show that his wife had a propensity for violence or a history of violent behavior. Given the evidence presented, we cannot say that the State has not proven beyond a reasonable doubt that defendant was the initial aggressor to the fight, which negates the second element of his claim of self-defense.

¶ 41 3. Imminent Harm

¶ 42 The third element of self-defense is that the danger of harm threatened against defendant was imminent. *People v. White*, 293 Ill. App. 3d 335, 338 (1997). Defendant testified that his wife attacked him, repeatedly throwing punches and restraining him as he tried to resist her. However, as discussed above, the State provided evidence, which the trial court found credible, that shows that defendant attacked his wife first, and that he was not reacting to any perceived threat of harm. The evidence has shown that defendant was not threatened with imminent harm, which invalidates the third element of his self-defense claim.

¶ 43 4. Force Necessary

¶ 44 The fourth element of self-defense is that defendant's use of force was necessary. *People v. White*, 293 Ill. App. 3d 335, 338 (1997). Defendant testified that he did not punch, hit, or hurt his wife, and that he only touched her as he resisted her attacks. This claim is inconsistent with

the wife's injuries as shown through both testimony and photographs introduced at trial. The wife's testimony shows that defendant threw an ironing board at her, pushed her to the ground, and threw repeated punches at her head. Furthermore, despite the wife's admission that she did attempt two swings at defendant, his use of force escalated the fight beyond what was necessary to defend himself by the very nature of the injuries sustained by the wife. We cannot say that defendant used necessary force to satisfy the fourth element of self-defense.

¶ 45

CONCLUSION

¶ 46 We find that the wife's testimony, corroborated by Officer Kumiga's testimony and an emergency room photograph, was sufficient evidence to prove beyond a reasonable doubt that defendant intentionally caused bodily harm to his wife. Viewed in the light most favorable to the State and given deference to the trial court's finding of credibility, we do not believe the evidence was so unreasonable, improbable or unsatisfactory as to warrant a reversal of defendant's conviction. Furthermore, we find the State's evidence sufficient to prove beyond a reasonable doubt that defendant was the aggressor in the fight and thus he was not using necessary force to protect himself against an imminent threat. Therefore, we reject defendant's claim of self-defense, and affirm defendant's conviction of domestic battery.

¶ 47 Affirmed.